

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

MICHAEL JOHN TURNBOUGH                    §  
v.     §        CIVIL ACTION NO. 6:11cv336  
RICK THALER                                    §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Michael Turnbough, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On June 30, 2011, the Magistrate Judge ordered Turnbough to pay the statutory filing fee of \$350.00 or to submit an application for leave to proceed *in forma pauperis* which was accompanied by a certified inmate trust account data sheet, as required by 28 U.S.C. §1915(b). Turnbough filed a response asking that the order be “zeroed out” based on a “non-negotiable acceptance for value.” He attached a number of exhibits, but none of these were of legal effect, nor did any of them excuse Turnbough’s obligation to pay the fee or file a proper application for leave to proceed *in forma pauperis*.

When Turnbough did not comply with the order or show good cause for this failure, the Magistrate Judge issued a Report on August 13, 2011, recommending that the lawsuit be dismissed without prejudice. Turnbough did not file objections to this Report; instead, he filed a document which he styled as a “motion to remove cause.” In this document, Turnbough states that he wishes

to dismiss his case because it apparently was not “directed to the proper organic common-law Article III venue,” but was filed “into an unconstitutional venue within a bankruptcy court of admiralty/maritime jurisdiction.”


The Court has reviewed the pleadings and the Report of the Magistrate Judge and has determined that this Report is correct. Nonetheless, Turnbough’s request for voluntary dismissal should be granted. *See Carter v. United States*, 547 F.2d 258, 259 (5th Cir. 1977) (plaintiff has absolute right to dismiss his complaint under Rule 41(a), Fed. R. Civ. P., prior to the filing of an answer or motion for summary judgment); *Thomas v. Phillips*, 83 Fed.Appx. 661, 2003 WL 22965565 (5th Cir., December 17, 2003) (citing *Carter*). It is accordingly

ORDERED that the Plaintiff’s request for voluntary dismissal of his civil action, contained within his “voluntary removal of cause” (docket no. 9) is GRANTED. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice on the request of the Plaintiff. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

**SIGNED this 30th day of September, 2011.**

  
MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE